

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re the application of:  
**Jacques M. Dulin**

Serial No.: **10/700,784**

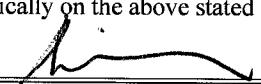
Filed: November 3, 2003

Title: **Oral Hygiene System and  
Method of Treatment**

) Attorney Docket No. **7175-004US**  
          )  
          ) Group Art Unit: **1614**  
          )  
          ) Examiner: Leslie A. Royds  
          )  
          ) Date: **June 5, 2006**  
          )  
          ) **Phone: 571 - 272 - 6096**  
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Certification under 37 CFR 1.6      Electronic Filing Date: **June 5, 2006**      # Pages **20**  
I hereby certify that this paper is being filed electronically on the above stated date to Examiner Leslie Royds.

Name: Betty Oppenheimer

Signature: 

**RESPONSE TO NOTICE OF NON-COMPLIANT AMENDMENT  
RESUBMISSION OF SUPPLEMENTAL RESPONSE TO OFFICE ACTION  
REQUEST FOR SECOND TELEPHONE INTERVIEW  
THIS CASE IS SPECIAL**

**MAIL STOP AMENDMENT**  
**Commissioner for Patents**  
P O Box 1450  
Alexandria, VA 22313-1450

Sir:

**Section 1, Introduction:**

This is Applicant's Response to the Notice of Non-Compliant Amendment, dated June 2, 2006, currently due July 2, 2006. This Response is a Resubmission of the Supplemental Response to the outstanding non-final Office Action dated November 16, 2005, pursuant to the Telephone Interview of March 27, 2006. The text of the cancelled duplicate claim 3 has been removed. Since no new claims are introduced no fee is due. However, should this be in error, the Office is authorized to charge any fee due to Deposit Account 04-1699. Please reference Docket Number 7112-004 US in connection with any transaction to assist counsel in tracking.

**Record of Telephone Interview, and Request for Follow-up Interview:**

Applicant and Dr. Milo Novotny engaged in a Telephone Interview with Examiner Leslie A. Royds, SPE Christopher F. Low, and Specialist Examiner Michael Woodward on Monday, March 27, 2006. Applicant and Dr. Novotny appreciate the courtesies and professionalism of the Examiners and the patience and helpful suggestions that assisted in focusing the discussion.

The Agenda of March 14, 2006 was followed as far as was pertinent to the open discussion; more specific comments are set forth below and in the Remarks section. Since Section I of the Agenda, relating to Formalites was indicated as satisfied by Examiner Royds, this Supplemental Response will not repeat Section 2 of the Response of February 16, in order to not burden the record of this case.

Examiner Royds did request resubmission of the claim set, including the cancelled duplicate claim 3. That is included below.

Pursuant to the gracious invitation of SPE Christopher Low, Applicant requests a second, follow-up Telephone Interview with the Examiner to discuss the claims as amended herein and to determine which references, if any, remain applied against the amended claims. The Examiner is requested to contact undersigned counsel at 360-681-7305 to set up a time mutually convenient for the Interview.

**Updated Declaration:**

Per the Interview on March 27, this requirement has been satisfied.

**The Restriction Requirement:**

Per the Interview, with this submission of Supplemental Response the Applicant's provisional election of Group I, claims 1 – 15, will be treated as having been made with traverse.

Applicant understands that upon receipt of the amended claims included herein, the Office will reconsider both the Restriction Requirement and Election of Species requirement. The comments in the original Response of February 16 are repeated here for the convenience of the Examiner to assist her in the review.

Applicant respectfully notes that contrary to the Statement on page 3 of the Detailed Action, the claimed method of oral hygiene cannot be practiced by toothbrush, toothpaste, floss and mouthwash. The Office has provided no evidence that the methods are the same.

The invention comprises a new medication delivery system and method of its use specifically applied to oral hygiene that is targeted to insertion in the buccal vestibules for long-term delivery of anti-microbial solutions to the sulcus and inter-dental spaces. The single-use sterile cotton rolls are moistened with a single dose amount of topical oral medication and inserted in the buccal vestibules. The rolls remain in the buccal vestibules for a time sufficient to be effective, on

the order of 5 – 30 minutes, and then they are removed and disposed-of. The rolls are single-use, single dose, disposable and portable. They can be used any time; one can speak, move and even eat with them in place. Even moistened with boric acid-type solutions, they do not burn, unlike the popular Listerene brand mouthwash. See page 2, line 23 through page 3, line 14 of the Specification.

That method cannot be practiced with a toothbrush, as it is a delivery system specially adapted for buccal vestibules. Can you picture toothbrushes in all 4 buccal vestibules for 30 minutes? You don't brush your buccal vestibules, you brush teeth. The purpose of the invention is to overcome the ineffectiveness of mouthwash swished around in the mouth, and by delivering treatment medication directly to the targeted area, the gingival sulcus.

It is improper to base a Restriction Requirement on an erroneous statement that a quite different implement can be used to achieve the same purpose. **Indeed, note that the Office Action asserts that both the device and the method are classified in Class 514, Subclass 568.** The search has already covered both the product and the process, and the Office Action repeatedly refers to usage and process steps.

Accordingly, review and withdrawal of the Restriction Requirement is requested. In any event, Applicant traverses the requirement.

**Response to Election of Species; Provisional Election of “Anti-Microbial”:**

To the extent the election of species requirement (pages 3 and 4 of the Detailed Action) is understood, Applicant traverses this requirement as well. The invention is directed to a medication delivery platform: single use, single-dose, disposable, portable, medication-moistened cotton rolls specifically adapted for insertion in the buccal vestibules for extended time-period delivery of an anti-microbial or therapeutic composition to the gingival sulcus and inter-dental spaces. Although the compositions are not equivalent, and use of one is not obvious in view of use of another, to the extent any composition is required to be elected, Applicant provisionally elects “antimicrobial compound or compositions” as called for in line 2 of Claim 3. Since both compositions of Claim 5 are anti-microbials, Claim 5 should not be withdrawn. Even if Applicant had elected benzoic acid, the Markush claim 5 must be examined. If it is not examined, then the election requirement seems meaningless. The Office is respectfully requested to explain the inconsistency.

Upon allowance of the “anti-microbial” species, per the MPEP, up to 5 additional species must be examined, and that covers all the “species” of claim 3.

**Summary of Claim Status, Including Current Status:**

Claims 1 – 20 are in this case. Applicant has provisionally elected claims 1 – 15, with

traverse, and the “anti-microbial” species of claim 3, also with traverse. Accordingly, no claims are cancelled (other than the duplicate claim 3, cancelled in the Preliminary Amendment), and all 20 are presented herewith, with their current status being indicated adjacent each, per the PTO Revised Notice dated 02/13/03.

Note, the erroneous duplicate claim 3 has been included in the claim list pursuant to the Examiner’s request in the Interview of Monday, March 27, 2006, but the text deleted to satisfy the Notice of Non-Compliant Amendment.

**End of Section 1, Introduction:**